

## Explanatory Statement

### Marine Order 507 (Load line certificates — national law) 2013 (Order 2013/12)

#### Authority

1. Subsection 159(1) of the of the *Marine Safety (Domestic Commercial Vessel) National Law* (the **national law**) set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the national law.
2. Subsection 159(5) of the national law provides that the regulations may make provision about certificates for the purpose of giving effect to an international convention or instrument that is in force for Australia.
3. Section 162 of the national law provides that the regulations may prescribe:
  - (a) penalties for offences against the regulations; and
  - (b) civil penalties for contraventions of the regulations.
4. Subsection 163(1) of the national law allows the National Regulator to make Marine Orders for any matter in the Act for which provision may be made by regulations, with some specified exceptions.
5. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time.
6. This Order was made under subsection 163(1) of the national law and is a legislative instrument for the *Legislative Instruments Act 2003*.

#### Purpose

7. This Order provides for the issue of load line certificates and the power for the National Regulator to deal with such certificates.

#### Overview

8. The national law is a key part of the national system for commercial vessel safety. When applied in all Australian jurisdictions (see section 2 of the national law) it will replace existing State and Territory laws, and parts of Commonwealth law, with a single law for the safety of all domestic commercial vessels and their crew in Australian waters. The national law is supported by Marine Orders made under the national law by the National Regulator.
9. The Australian Maritime Safety Authority is the National Marine Safety Regulator (referred to as the **National Regulator** — see section 9 of the national law).
10. The Marine Order provides that a person may apply for the issue of a load line certificate. It also provides that the National Regulator has powers for dealing with load line certificates once issued, being the power of variation, suspension and revocation. The Marine Order further provides for offences for the owner and master of a vessel if the vessel is operated without or in a manner contrary to the load line certificate issued.
11. The effect of the Order is only ancillary to the national law and does not affect the policy background of the national law. For these reasons, and based on the information available, a Regulation Impact Statement is not required (OBPR reference number 14678).

## Consultation

12. The instrument was developed in consultation with the Maritime Agencies Forum, representing the marine safety authorities of each State and the Northern Territory, and the Department of Transport and Infrastructure. It was advertised for public comment and posted for comment on the national law website. Comments from the public and from marine safety authorities were considered and the draft instrument was developed taking these into account.

## Documents incorporated by reference

13. The following marine order referenced in the Order is available from <http://comlaw.gov.au>:

- *Marine Order 501 (Administration – national law) 2013*

14. The *USL Code* which is referenced in the Order is available from <http://www.nmsc.gov.au>.

## Commencement

15. The Order commences on 1 July 2013.

## Contents of this instrument

16. Section 1 sets out the name of the Order.

17. Section 2 provides for commencement of the Order.

18. Section 3 states the purpose of the Order.

19. Section 4 sets out the provisions of the national law that provide the powers for the Order to be made.

20. Section 5 states the application of the Order.

21. Section 6 provides definitions for terms used in the Order. It also contains notes referring to terms defined elsewhere.

22. Section 7 provides that an application under the Order for a load line certificate must be in accordance with *Marine Order 501 (Administration- national law) 2013*.

23. Section 8 provides that the National Regulator must issue a certificate if an application has been made and the conditions mentioned in section 9 are met.

24. Section 10 specifies the term of certificates.

25. Sections 11 states that application for variation, suspension or revocation of a load line certificate must be made in the approved form.

26. Sections 12, 13 and 14 set out the powers of the National Regulator to vary, suspend or revoke a load line certificate in specified circumstances.

27. Section 15 imposes an obligation on the master of a domestic commercial vessel to comply with a condition for the issue of a load line certificate. Breach of this condition may result in a criminal or civil penalty.

28. Section 16 imposes an obligation on the owner of a domestic commercial vessel to comply with a condition for the issue of a load line certificate. Breach of this condition may result in a criminal or civil penalty.

29. Section 17 creates an offence for the master of a domestic commercial vessel if the vessel operates without a load line certificate, or submerges or fails to display a load line or associated mark. Breach of this condition may result in a criminal or civil penalty. Defences are set out in subsections 17(4) and (5).

30. Section 18 creates an offence for the owner of a domestic commercial vessel if the vessel operates without a load line certificate, or submerges or fails to display a load line or associated mark. Breach of this condition may result in a criminal or civil penalty. Defences are set out in subsections (4), (5) and (6).

### **Statement of compatibility with human rights**

31. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Purpose and effect**

32. The instrument is made under the *Marine Safety (Domestic Commercial Vessel) National Law* and sets out requirements for the application for, issue by the National Regulator, and conditions that apply to, load line certificates for domestic commercial vessels.

### **Possible effect on human rights**

33. This instrument creates offences of strict liability for operation of a vessel in breach of a condition of a load line certificate or without a load line certificate or in certain other circumstances. Strict liability offences allow for the imposition of criminal liability without the need to prove fault (see section 6.1 of the *Criminal Code*). Strict liability offences may engage and limit the presumption of innocence mentioned in Article 17 of the International Covenant on Civil and Political Rights.

34. However, strict liability is imposed in pursuit of the objective of reducing the risk to safety that would arise from commission of the offences. The penalties are relatively low (50 penalty units) and are within the limitation imposed by subsection 162(1) of the national law. For offences under sections 18 and 19 of the Order, some specific defences are available, as mentioned in those sections.

### **Assessment**

35. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate .

### **Making the instrument**

36. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990*.